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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/689,141	10/20/2003	Richard J. Gilpatrick	039189-9074	2779				
<div>23409 7590 06/05/2007</div> <div>MICHAEL BEST & FRIEDRICH, LLP</div> <div>100 E WISCONSIN AVENUE</div> <div>Suite 3300</div> <div>MILWAUKEE, WI 53202</div>								
<div>EXAMINER</div> <div>MCDUFFIE, MICHAEL D</div>								
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/689,141

Applicant(s)

GILPATRICK ET AL.

Examiner

Michael McDuffie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) 1-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-57 and 59-65 is/are rejected.
- 7) ☒ Claim(s) 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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This correspondence is in response to applicant's reply filed on 03/23/2007. Claims 52-65 are pending.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 57 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "substantially" in claim 57 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Therefore, the term substantially will be understood to mean, "being largely but not wholly that which is specified," as defined by Merriam-Webster's Collegiate Thesaurus copyright © 1988 by Merriam-Webster, Incorporated.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 52-53, 57, and 61-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Lucchi (U.S. Patent No.: 6582201).

Regarding claim 52, Lucchi discloses frame **2** comprising: a base **6** defining a first plane and configured to support a power unit **3**; four legs (as shown in Fig. 4 below) extending from the base **6**; a support (also shown in Fig. 4 below) coupled to each of the respective legs, each support configured to support the legs on a surface; a handle **10** coupled to the base **6**, the handle including an upper end (see Fig. 4 below); a first support member extending between the upper end and the base, the first support member defining a first axis; a second support member extending between the upper end and the base, the second support member defining a second axis (as shown in Fig. 4 below); where the first and second axes lie in a second plane that intersects the first plane, where the first support member is configured to form a first acute included angle (as shown in Fig. 2 below) with the first plane that lies in the second plane, where the second support member is configured to form a second acute included angle (see Fig. 2 below) with the first plane that also lies in the second plane, and where the second plane is configured to form a third acute included angle (as shown in Fig. 5 below) with the first plane.

With regards to claim 53, Lucchi teaches the frame **2**, where the supports define a footprint having a first width, and where the upper end of the handle has a second width less than the first width (as shown best in Fig. 2).

Regarding claim 57, Lucchi further teaches the frame **2**, where at least one of the legs is substantially aligned with the first axis, and wherein at least one of the legs is

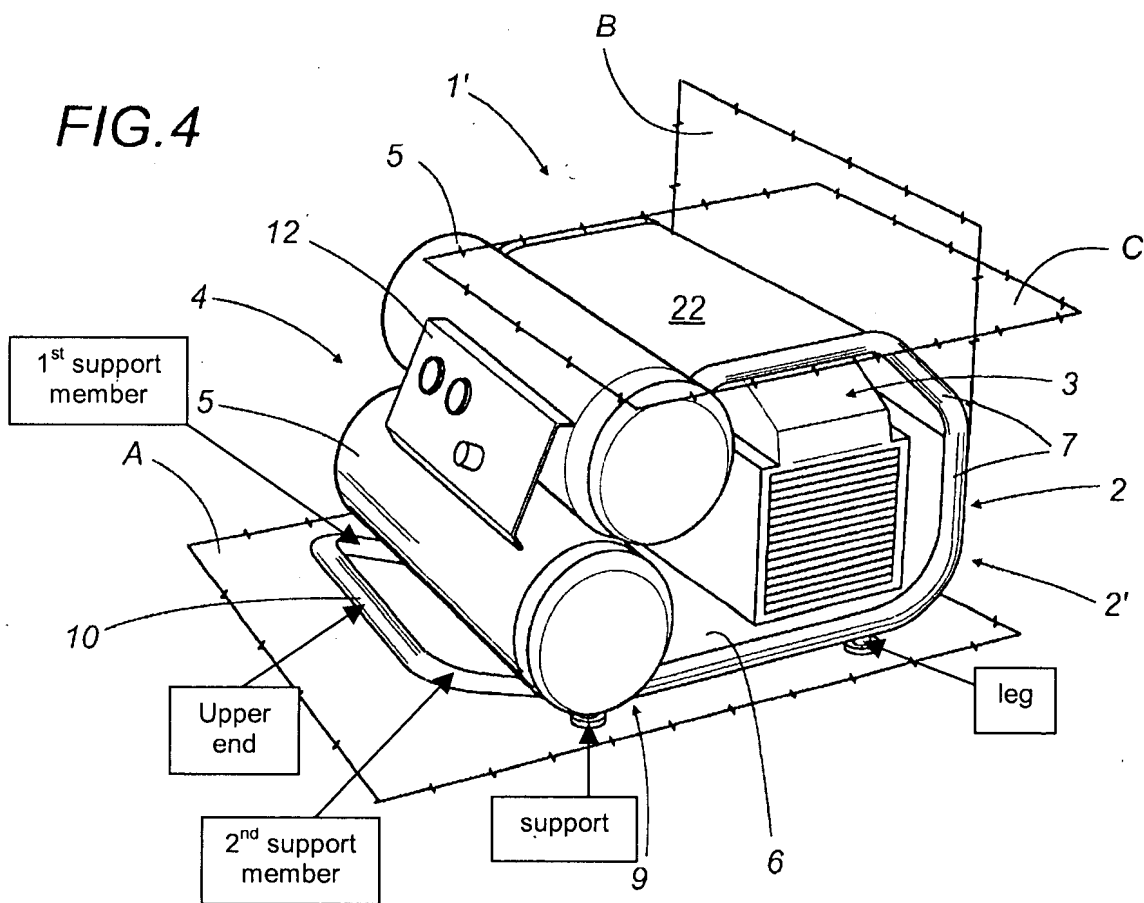
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substantially aligned with the second axis. The Examiner notes that the axis is defined as the line going through each of the first and second support members in Fig. 2 below.

With regards to claim 61, Lucchi goes on to disclose the frame **2**, where the first axis is configured to form a first acute exterior angle with respect to the upper end of the handle in the second plane, and where the second axis is configured to form a second acute exterior angle with respect to the upper end of the handle in the second plane (as shown in Fig. 2 below).

Regarding claim 62, Lucchi further teaches the frame **2**, where the base **6** includes an aperture therein configured to receive a portion of the power unit **3** (as shown in Fig. 2 below).

With regards to claim 63, Lucchi goes on to teach the frame **2**, where the base **6** includes a mounting plate **18** configured to support the power unit **3**.



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FIG. 2

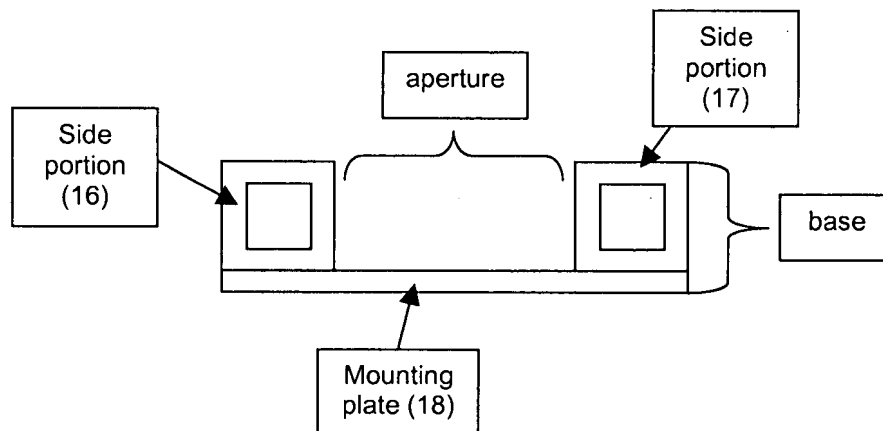
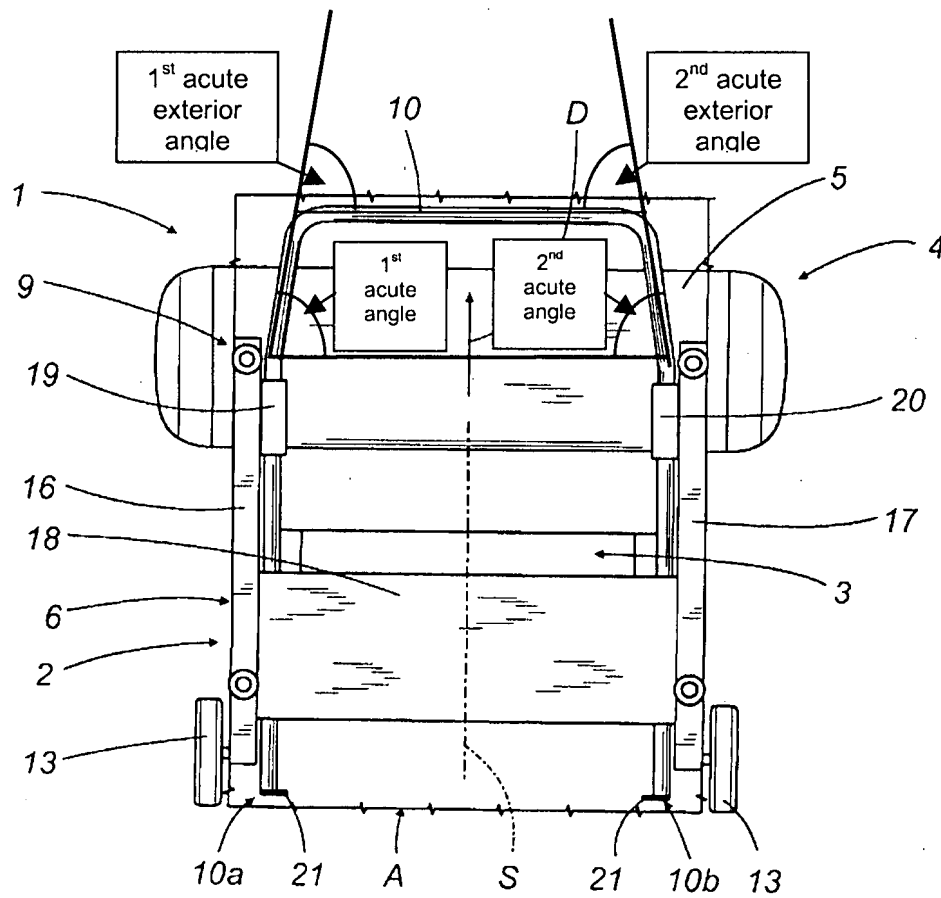
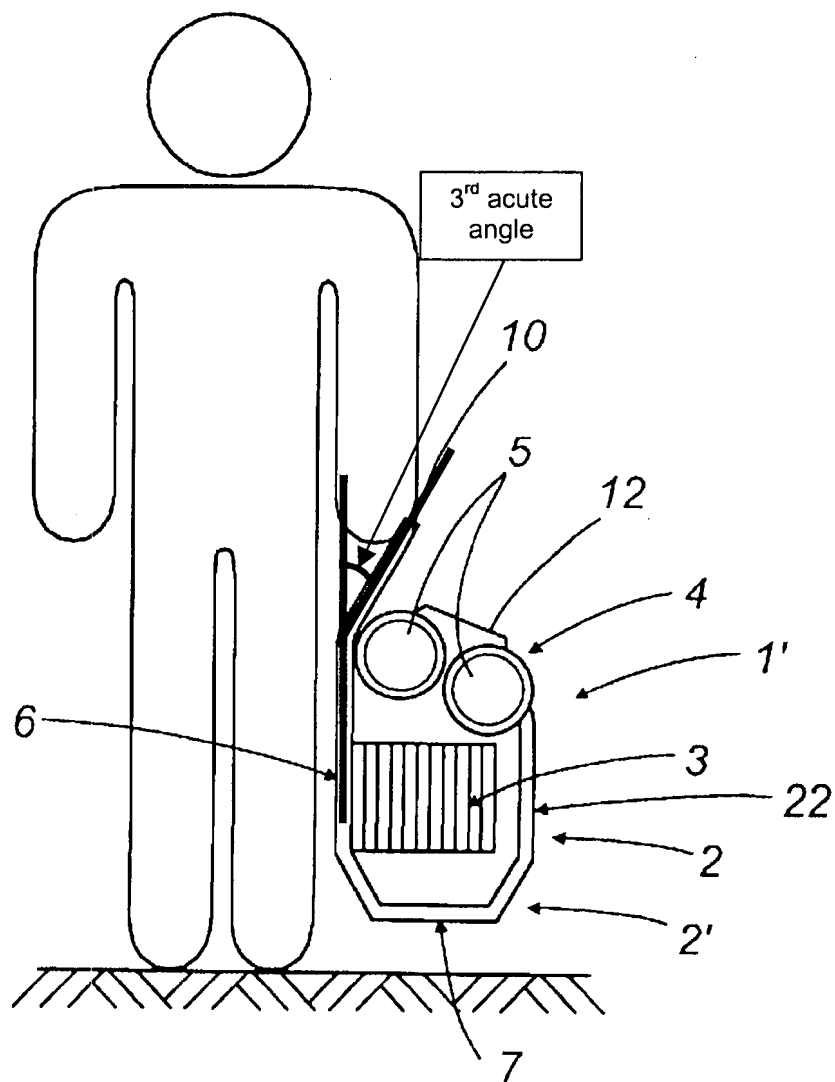


FIG.5



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 54-55 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucchi in view of Kildow (U.S. Patent No.: 6070808).

Regarding claim 54, Lucchi is disclosed above, and fails to teach an accessory holder coupled to the handle. Kildow teaches a frame, further comprising an accessory holder **91** coupled to the handle **16**. It would have been obvious to one having ordinary skill in the art at the time of the invention, to attach a hook to the handle of Lucchi, in order to aid in holding a power cord, spray nozzle, or spray nozzle hose, when the apparatus is not in use, as taught to be desirable by Kildow (see col. 5, lines 53-56).

With regards to claims 55 and 64, the combination of Lucchi and Kildow is disclosed above, and fail to teach where the accessory handle is integrally formed as one piece with the handle. However, it is well known in the art that making separate

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pieces integral would not alter the intended use of the invention, as this feature is merely a design choice.

Claims 56 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucchi in view of Nolan (U.S. Patent No.: 6375437).

Regarding claim 56, Lucchi is disclosed above, and fails to teach a handle with grips. Nolan teaches grip ridges **68** attached to the handle **66**. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, to add grips to Lucchi's handle, in order to enable the assembly to be manually moved by the user manually engaging the upper handle grip and moving the handle in a direction toward the upright portion of the frame structure, as taught to be desirable by Nolan (see cols. 4, lines 66-67 and 5, lines 1-4).

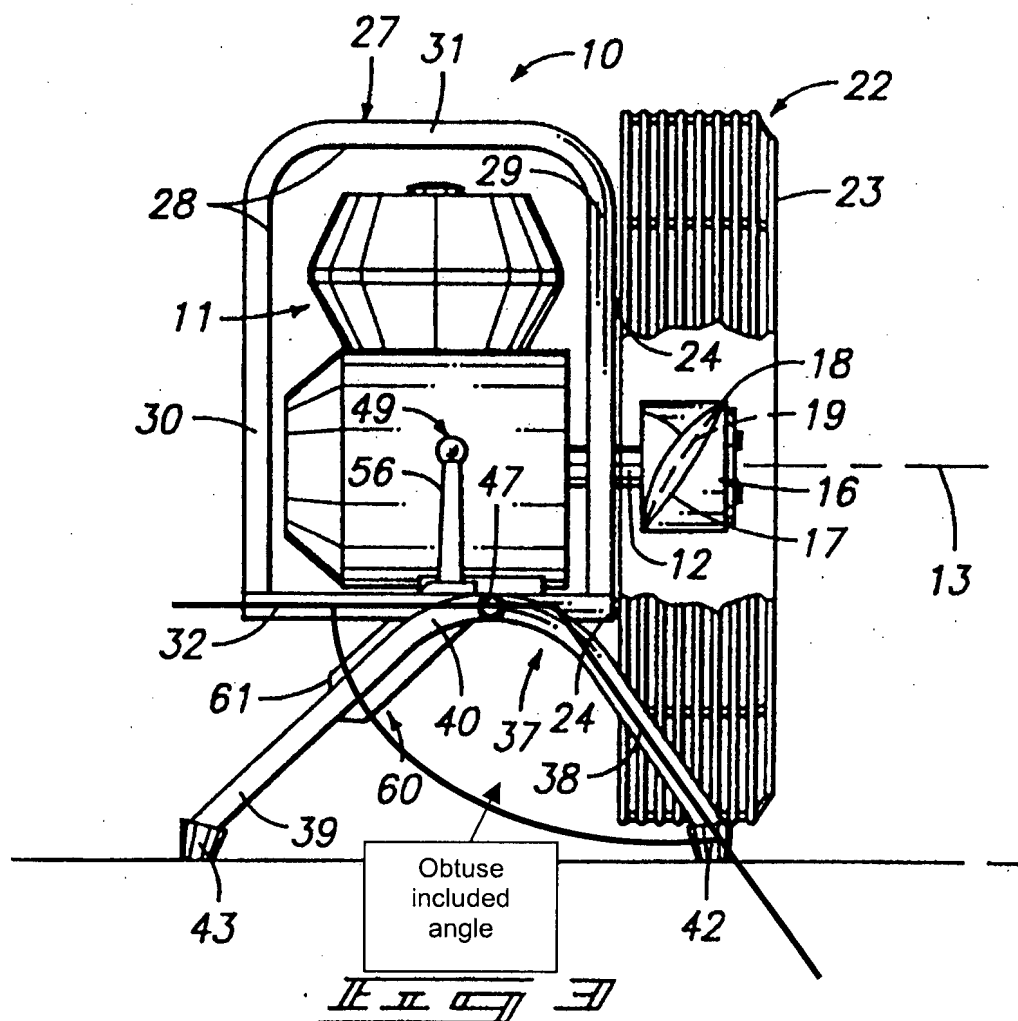
With regards to claim 60, Lucchi is taught above, and fails to disclose a front panel coupled to the handle. Nolan teaches a frame **10**, further comprising a front panel **70** coupled to the handle **66**. It would have been obvious to one having ordinary skill in the art at the time of the invention, to add a plate to Lucchi's handle, in order to mount and protect the visual and manually operable elements which the user must interface with in the operation of the assembly, and to maintain them in a convenient focused area of access, as taught to be desirable by Nolan (see col. 4, lines 45-49).

Claims 59 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucchi in view of Raczynski (U.S. Patent No.: 5205711).

Regarding claims 59 and 65, Lucchi is discussed above, and fails to teach where the legs form obtuse angles with the base. Raczynski discloses a frame **27**, where

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each of the legs **38**, **39** is configured to form an obtuse included angle (as shown in Fig. 3 below) with the base **32**. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to angle the legs of Lucchi outwardly, in order to provide sufficient stability, while minimizing the overall dimensions of the device, to facilitate transport and storage, as taught to be desirable by Raczykowski (see col. 4, lines 39-41).



Allowable Subject Matter

Claim 58 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

The rejections made in the office action mailed on 11/29/2006 are withdrawn, based on the cancellation of claims 1-51. In view of new claims 52-65, the above rejections are made.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael McDuffie whose telephone number is 571-272-3832. The examiner can normally be reached on Mon.-Fri., 7AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mon
Michael McDuffie
28-May-07



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